

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 8776 of 2023

Petitioner :- Rambharath

Respondent :- Smt. Purnima Devi

Counsel for Petitioner :- Harish Chandra Singh, Anand Pal Singh

Hon'ble Jayant Banerji, J.

1. Heard learned counsel for the petitioner.

2. This petition has been filed by the plaintiff seeking to set aside the order dated 18.4.2023 passed by the Additional District & Sessions Judge, Special Court No. 4, Gorakhpur in Civil Misc. Case No. 585 of 2019 (Rambharath Vs. Smt. Purnima Devi).

3. It appears that the aforesaid civil misc case was instituted before the appellate court in the background of the fact that the suit filed by the plaintiff was dismissed ex-parte by means of a judgment and order dated 29.7.2017 by the trial court. A belated appeal was filed on 9.4.2019 alongwith an application under Section 5 of the Limitation Act which was numbered as Civil Misc. Case No. 585 of 2019. The cause for delay in filing the appeal was mentioned that Original Suit No. 742 of 2008 was filed by the petitioner in which proceedings took place in Court No. 18. By publication in the newspaper, the defendant was served with summons and the case was directed to proceed ex-parte on 20.8.2014. On 26.2.2016, the case was transferred to the FTC Court (S.D.) of which no notice was given to the plaintiff. It is stated that the plaintiff is a disabled persons and works in Lucknow in a Government job. It was stated in the application that since the plaintiff was ill, he did not pursue the case. By a general order dated 15.7.2017, the file of the case was sent to the court of the Civil Judge (Junior Division)/Court No. 2, Gorakhpur of which no information was given to the plaintiff nor his advocate. It was stated that in that court in the absence of the plaintiff and without any evidence, on 20.7.2017, it was written that the arguments have been heard and on 29.7.2017, the suit of the plaintiff was dismissed ex-parte. It is stated that when the health of the plaintiff applicant improved, he inquired from his advocate who gave an application for inspection whereafter the facts came to light. Thereafter, the appeal was filed and the delay in filing the appeal ought to be condoned.

4. The appeal court noticed that against the ex-parte judgment and order dated 29.7.2017, the appeal was presented after excessive delay on 9.4.2019. The appeal court scrutinized the original record and found that in the order-sheet, on 20.7.2017, it was mentioned that the case was presented and called out and plaintiff alongwith the learned Advocate were present. The arguments of the learned advocate was heard. For ex-parte judgment, the file was decreed to be placed on 29.7.2017. The appeal court stated that it was clear from that order-sheet that on 20.7.2017 the plaintiff and his learned advocate were present who were heard ex-parte and the next date for delivery of judgment was fixed on 29.7.2017. It is stated in the impugned order that the applicant has not stated that when did he fall ill and when did he recover. The applicant had also not stated that on which date did he came to know about the ex-parte judgment. The applicant had also not stated that on which date the file of the case was inspected and when was the copy of the judgment applied for and when was it received. It was, accordingly, held that the reason for the delay is not believable. The Civil Misc. Case No. 585 of 2019 was, accordingly, disposed of while dismissing the application under Section 5 of the Limitation Act.

5. The sole contention of the learned counsel for the petitioner is against the order dated 20.7.2017, in the order-sheet neither the signatures of the plaintiff nor his Advocate appear. No certified copy of the order-sheet has been filed from which the correct facts could be evinced. Even otherwise, the appeal court has also dealt with other aspects which reflected the vagueness of the allegations made by the petitioner in the application under Section 5 of the Limitation Act.

6. Under the circumstances, no interference is called for and this petition is **dismissed**.

7. Registrar (Compliance) is directed to send a copy of this order to the concerned court within a period of fifteen days from today.

Order Date :- 1.11.2023

A. V. Singh

(Jayant Banerji, J.)